

Bishambhar Dayal Srivastava Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Nov. 5, 1993

Acts Referred: Penal Code, 1860 (IPC) â€” Section 161
Prevention of Corruption Act, 1947 â€” Section 2, 5, 6

Citation: (1994) 18 ACR 57

Hon'ble Judges: Surya Prasad, J

Bench: Single Bench

Advocate: Pankaj Kumar Srivastava and A.N. Srivastava, for the Appellant;

Final Decision: Allowed

Judgement

Surya Prasad, J.

This is a criminal appeal against the judgment and order dated 13th July, 1989 passed by then Special Judge/Additional

Sessions Judge, Kanpur Nagar in Special Sessions Trial No. 2/85 State of U.P. v. Bishimbhar Dayal Srivastava convicting the Appellant u/s 161

IPC and Section 5/2 of the Prevention of Corruption Act and sentencing him respectively to one year's Rigorous Imprisonment and one year's

Rigorous Imprisonment coupled with a fine of Rs. 500/- thereunder.

2. The prosecution case briefly stated is that on 17-9-83 the Appellant-accused Bishambhar Dayal Srivastava was working as Pharmecist in the

Employees State Insurance Dispensary, Pandu agar, Kanpur. Shiv Mohan PW 2 was an employee in the Elgin Mill No. 1 Kanpur. On 19-3-83 he

was admitted to the Employees" State Insurance Dispensary, Pandu Nagar, Kanpur in connection with his medical treatment. He had been

hospitalised till 15-6-83 on which date he was however discharged. He had to spend Rs. 609-70 paise in connection with his treatment. lie moved

an application. Ex. Ka-4 before the Superintendent, Employees State Insurance Dispensary, Pandu Nagar, Kanpur and enclosed therewith

discharge certificate, vouchers etc. for reimbursement of the aforesaid sum of money. The Superintendent sent that application to the Head Clerk

B.N. Srivastava, who in his turn marked it to the Appellant-accused for necessary action. Shiv Mohan PW 2 met several times the Appellant-

accused in order to get the aforesaid sum of money reimbursed. But the Appellant-accused avoided doing anything on his (Shiv Mohan"s)

application and ultimately demanded 10% of the aforesaid sum of Rs. 609-70 Paise as illegal gratification from him for doing his work.

Consequently Shiv Mohan PW 2 made a complaint to the Superintendent, Employees State Insurance Dispensary, Pandu Nagar, Kanpur but to

no effect. However, he (Shiv Mohan) PW 2 again met the Appellant-accused, who demanded Rs. 50/- for doing his work Shiv Mohan returned

after assuring him that he would give him Rs. 50/-. On 17-9-83 he made an application Ex. Ka-5 to the Superintendent Vigilance Department

against the Appellant-accused, whereupon the Superintendent Vigilance interrogated Shiv Mohan in connection therewith. Shiv Mohan had a fifty-

rupee-note with him for the purpose of giving it to the Appellant-accused and therefore he gave that note to the Superintendent Vigilance, who

made his initial thereon and directed the Dy. S.P. of Police (Vigilance) Kanpur, who was also available in the office, to take necessary action and

therefore Shiv Mohan met him also there. The Dy. S.P. of Police (Vigilance) made certain queries from him. He also put his initial on the said note.

He sent for two public witnesses in the office through a police constable. He made certain queries from Shiv Mohan before the witnesses and got

the said note treated with phenolphthalien powder by the police constable besides observing certain other formalities in connection therewith. He

satisfied himself in all respects and thereafter returned the said note to Shiv Mohan with the direction that he would give that very note (material Ex.

1) to the Appellant-accused on his demand. The Dy. S.P. of police (Vigilance) Sri. Tejveer Singh PW 1 prepared a Fard Ex. Ka-2 to the aforesaid

effect. It is not out of place to mention that the Appellant-accused had asked Shiv Mohan to meet him in his office on 19-9-83 at 11.00 A.M.

Consequently the Dy. S.P. of Police Sri. Tejveer Singh PW 1 formed a trap party consisting of himself, Inspector P.K. Tewari and certain others

including Ram Khilawan PW 5. He along with them proceeded to the police Station Kakadeo in plain dress. Reaching there he took Inspector

R.N. Sharma also with him. They all proceeded from the police Station on foot and reached Pandu Nagar Employees State Insurance Dispensary.

The Dy. S.P. of Police Sri. Tejveer Singh and both the above Inspectors went inside the medical store room where the Appellant-accused was

sitting. The complainant Shiv Mohan also went to the Appellant-accused in the said room and enquired the Appellant-accused about his work,

whereupon the Appellant-accused asked him whether he had brought the money. He (Shiv Mohan) replied in the affirmative, whereupon the

Appellant-accused demanded the same from him. Consequently Shiv Mohan gave the said fifty rupee note material Ex. 1 to the Appellant-

accused, who kept it in the right side pocket of his pant. The Dy. S.P. of Police Sri. Tejveer Singh and others caught hold of him and recovered

the aforesaid note from his pocket. A Fard Ex. Ka-3 to that effect was prepared. All the other members of the trap party had been outside the

aforesaid store room, but they had been seeing from outside the said store room, what was going on inside it. All the necessary formalities were

observed in connection with the recovery of the aforesaid note from the pocket of the Appellant-accused. Thereafter the trap party along with the

articles recovered returned to the police station Kakadeo, where a report was lodged and a case was ultimately registered against the Appellant-

accused u/s 161 IPC and Section 5 of the Prevention of Corruption Act. After the registration of the case, it was entrusted to the Inspector Surya

Bhan Singh Gautara PW 7 for investigation. After completion of the investigation into the case, he submitted the charge-sheet Ex. Ka-14 against

the Appellant-accused. He had also obtained sanction Ex. Ka-7 for the prosecution of the Appellant-accused in regard to the offences alleged to

have been committed by him.

3. The prosecution examined Dy. S.P. of Police (Vigilance) Sri. Tejveer Singh PW 1, Shiv Mohan PW 2, Dr. Jaswant Rai Sethi PW 3, Dr. Tara

Chandra PW 4, Ram Khilawan PW 5, Padmesh Narain Mishra PW 6 and Surya Bhan Singh Gautam PW 7 and relied upon certain documents in

support of its case.

4. The accused pleaded not guilty. He has pleaded ignorance about many of the facts relating to the prosecution case. He has stated that all the

allegations levelled against him are wrong and incorrect. He has also stated that he has been falsely implicated on account of enmity. He has

examined Dalganjan Singh DW 1 and Mata Prasad DW 2 in support of his contentions.

5. Having heard the learned Counsel for the parties and having considered the evidence on record, the learned Special Judge/Additional Sessions

Judge, Kanpur Nagar convicted and sentenced the Appellant-accused through his impugned judgment and order as mentioned earlier. Aggrieved,

he preferred this appeal against the same.

6. Heard the learned Counsel for the parties and perused the record.

7. The learned Counsel for the Appellant-accused has drawn the attention of the Court to the sanction order Ex. Ka-7 and the statement of Dr.

Tara Chandra PW 4 who had accorded the sanction order Ex. Ka-7 for the prosecution of the Appellant-accused and has vehemently argued that

Dr. Tara Chandra has not at all applied his mind in according the sanction order in the present case and that the sanction order is not in accordance

with the provisions of law and therefore, the prosecution case fails for this reason only.

8. In the connection the relevant portion of the sanction order Ex. Ka-7 is reproduced as under:

Aur chunki main Dr. Tara Chandra Apar Nirdeshak K. Ra. Be. U.P. Kanpur ukt Sree Bishambhar Dayal Srivastava ko pad se hatane ke liye

saksham अधिकारी होने के नाते, मामले के उक्त अभिकथन के सम्बन्ध में मेरे सामक्ष प्रस्तुत की गई सामग्री और मामले की परिस्थितियों का

पूर्ण रूप से और सबधनी पूर्व परीक्षण करने के पश्चात यह समाज्था हूँ की श्री. Bishambhar Dayal Srivastava को उक्त अपराधों के लिये

Nyayalaya में अभियोजित किया जाय.

9. A perusal of the aforesaid portion would show that there is no description of the documents placed before Dr. Tara Chandra PW 4 at the time

of according sanction. The sanction order Ex. Ka-7 is, therefore, conspicuously silent in this respect. The Investigating Officer Surya Singh Gautam

has not at all given the description of the documents placed before Dr. Tara Chandra PW 4 for the purpose of obtaining sanction order Ex. Ka 7.

His statement too is of no help to the prosecution case in regard to the sanction order in particular.

10. Dr. Tara Chandra PW 4 has stated in his examination-in-chief that he had accorded sanction order Ex. Ka-7 after perusing the case diary and

other documents. But he has stated in his cross-examination that he cannot remember what documents were actually put up before him at the time

of according sanction order. Not only this, but he has also stated that he cannot tell even on the basis of his memory whether any document was

put up before him at that time or not. He has further stated that he cannot say who of the clerks had prepared the sanction order Ex. Ka-7. Nor

can he say whether he had prepared it or not. He cannot further say whether or not any Daroga in the uniform was present before him when he

accorded the sanction order Ex. Ka-7. He cannot say whether he had read any case diary or not. He has categorically stated in this regard that he

has stated in his examination-in-chief about the perusal of the case diary particularly because the words "Case Diary" have been specifically written

in the sanction order Ex. Ka-7. At the last in his cross-examination he has stated that the Assistant Director (Administration) had sent the sanction

order Ex. Ka-7 to him after preparing it.

11. The statement of Dr. Tara Chandra if carefully read, would conclusively conclude that the sanction order Ex. Ka-7 is only a draft sanction

prepared by the Assistant Director (Administration) and that the original sanction has not been produced by the prosecution. His statement further

shows that no document was actually produced before him (Dr. Tara Chandra) for obtaining the sanction order Ex. Ka-7. The Investigating

Officer Surya Bhan Singh Gautam PW 7 has not given the details of the documents allegedly placed before Dr. Tara Chandra PW 4 for obtaining

sanction order. In view of all this, the question of application of mind by Dr. Tara Chandra PW 7 before according sanction does not arise.

Therefore, the sanction order Ex. Ka-7 cannot be treated as a valid sanction.

12. The learned Counsel for the Appellant-accused has relied upon Md. Tafazul Rahman Vs. State of Orissa, (Orissa High Court):

The aforesaid evidence gives rise to a peculiar situation. Ext. 16 shows that it was a draft sanction order. It is not known what happened to the final

sanction order. It was not produced nor proved in the trial Court. The details of material documents which might have been produced before PW

10, the Superintending Engineer and sanctioning authority which he might have taken into consideration have not been stated in the sanction order-

(Ext. 16). It does not appear from it that the statement of PW 12 who was the most material witness was placed before him and he had perused

the same before according sanction. The evidence of PW 10, the Superintending Engineer quoted above clearly discloses non-application of mind.

When he gave evidence he did not remember as to on the basis and on consideration of which material documents he gave sanction for

prosecution. On the other hand, it discloses that he was asked to sign the draft sanction order (Ext. 16) and he did so. It was expected of PW 14,

the Inspector of Vigilance who submitted charge-sheet against the Appellant and obtained the sanction order from PW 10 to have stated the

material documents which were placed before PW 10 for obtaining the sanction order. Unfortunately except a general statement that all materials

were placed before the Superintending Engineer he did not state the details thereof. Such evidence will give rise to the only conclusion which I have

drawn and that is non-application of mind of the sanctioning authority before according sanction for prosecution of the case. It is settled principle of

law that Section 6 of the Act is of mandatory character. It is incumbent on the prosecution to prove that a valid sanction has been granted by the

sanctioning authority after he was satisfied that a case for sanction has been made constituting the offence. This should be done in two ways: either

(i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (ii) by adducing

evidence aliunde to show that the facts placed before the Sanctioning authority and the satisfaction arrived by it. Any case without a proper

sanction must fail because, this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. The policy underlying

Section 6 is that there should not be unnecessary harassment of a public servant. The above view is supported by a large number of authorities.

Such as Major Som Nath Vs. Union of India (UOI) and Another, , Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , R.S. Nayak Vs. A.R.

Antulay, , Republic of India Vs. Khagendranath Jha, , Md. Sabir Husain v. State of Orissa (1983) 56 Cal 288 , to name a few.

13. The above observations in the aforesaid ruling fully support the contention of the learned Counsel for the Appellant-accused to the effect that

the sanction order is not a valid one and that the sanctioning authority has not applied its mind before according it.

14. In the result the appeal is allowed. The impugned judgment and order are set aside. The Appellant-accused is acquitted of the offences with

which he has been charged. He is on bail. His bail bonds are cancelled and sureties stand discharged. He need not surrender.